

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JUL 24 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY

DENYS LOPEZ MORENO, Individually)
and as heir to the Estate of Derek R.)
Lopez, Deceased,)

Plaintiff,)

VS.)

NORTHSIDE INDEPENDENT)
SCHOOL DISTRICT, et al.,)

Defendant.)

Civil Action No. SA-11-CA-0746-XR

ORDER

On this date, the Court considered Defendants' request for attorneys' fees and costs (Docket no. 50) made pursuant to the Court's February 6, 2013 Order finding Elizabeth Lopez and Christopher Avilez in contempt of court and awarding sanctions. Defendants seek a total award of \$3,429.34 in costs.

A. Background

Plaintiff originally filed this lawsuit against Defendants Northside Independent School District ("NISD"), John W. Page, and Daniel K. Alvarado on September 8, 2011. Plaintiff alleged the violation of her son's constitutional rights under 42 U.S.C. § 1983 and Texas common law related to her son's shooting death by Alvarado. Defendants tried to depose two non-parties to the lawsuit, Elizabeth Lopez and Christopher Avilez, who the Defendants thought had firsthand knowledge of the events leading to the suit. Defendants served Lopez and Avilez on August 24, 2012 with a Subpoena To Testify At a Deposition In a Civil Action. Though they both cashed their

witness fee and milage checks, neither Lopez nor Avilez appeared for their depositions scheduled for September 27, 2012. On October 3, 2012, Defendants filed a motion for contempt, seeking an award of attorneys' fees and costs for the witnesses' failure to appear. Docket no. 37. They rescheduled the depositions for October 31, 2012, a date agreed to by Lopez. Both Lopez and Avilez failed to appear, and the Defendants again filed a motion for contempt related to the missed depositions in October and in September. Docket no. 40. This Court denied both of Defendants' motions for contempt. Docket no. 41. The Court also warned Avilez and Lopez that they were required to appear for any depositions if they were subpoenaed, or they must file a motion with the court explaining why they should not have to appear for the depositions. *Id.* They were also explicitly warned not to evade service of subpoenas. *Id.*

Lopez and Avilez were scheduled to be deposed on December 19, 2012, but they again did not appear. *See* Docket no. 45 at 4-5. Defendants filed a Third Motion for Contempt. *Id.* The Court offered Lopez and Avilez a final opportunity to avoid being held in contempt of court if they appeared for depositions on or before February 6, 2013. If Lopez and Avilez failed to do so, the Court indicated its intent to hold a show cause hearing regarding the motion for contempt. *See* Docket no. 46. Lopez and Avilez were served with subpoenas to appear for depositions on February 1, 2013. Docket no. 47. They failed to appear for the depositions, and they did not appear for the show-cause hearing on February 6. As a result, the Court found by clear and convincing evidence that Lopez and Avilez were "in contempt of court for failing to appear at their December 19, 2012 depositions, failing to appear at their February 1, 2013 depositions, and failing to appear before the Court [on February 6, 2013] as ordered." Docket no. 49 at 2. Lopez and Avilez were fined for the reasonable costs and attorneys' fees incurred by Defendants' counsel "as a result of [their] failure

to appear for the depositions and for the [February 6 hearing].” *Id.*

B. Defendants’ Bill of Costs

Defendants seek \$770.00 in costs paid to Gracie O’Rourke Court Reporters, Inc. for reporter’s fees on September 27, 2012, October 31, 2012, December 19, 2012, and February 1, 2013. *See* Docket no. 50 at 1-2. Because the Order finding Lopez and Avilez in contempt of court fines them for their failure to appear on December 19, 2012 and February 1, 2013, only the costs related to these dates will be awarded. Defendants paid Gracie O’Rourke Court Reporters, Inc. \$200 on December 19 and \$200.00 on February 1. *Id.* The Court, therefore, awards \$400.00 dollars in fees paid to court reporters.

Defendants seek \$724.34 in costs paid to Magee Litigation Support, Inc. for service of subpoena on Lopez and Avilez on August 24, 2012, August 27, 2012, October 24, 2012, October 25, 2012, December 10, 2012, December 17, 2012, and January 24, 2012. *Id.* at 2-3. Again, because the Court Order deals with Lopez and Avilez’s failure to appear on both December 19, 2012 and February 1, 2013, only the costs related to those dates will be awarded. Defendants paid Magee Litigation Support, Inc. \$75.00 on both December 10, 2012 and December 17, 2012 and \$150.00 on January 24, 2012. *Id.* Thus, the Court awards Defendants \$300.00 in costs paid for service of subpoena on Lopez and Avilez.

Finally, Defendants seek \$1,935.00 in attorneys’ fees incurred in connection with Lopez and Avilez’s failure to appear for depositions and the show-cause hearing. *See id.* at 3. The requested fees that the Defendants incurred on September 27, 2012 and October 31, 2012 will not be awarded, because the Court Order relates only to the depositions that Lopez and Avilez missed in December and January. Defendants request \$900.00 in attorneys’ fees for preparing the Motion for Contempt

of Lopez and Avilez related to the December 19, 2012 failure to appear. *Id.* They also seek \$247.50 in attorneys' fees incurred in connection with Lopez and Avilez's failure to appear at the February 6, 2013 hearing. *Id.* The Court, therefore, grants Defendants \$1,147.50 in attorneys' fees.

C. Conclusion

In sum, the Court awards Defendants \$1,847.50 as follows:

- (1) \$400.00 in court reporter's fees,
- (2) \$300.00 in fees for service of subpoenas, and
- (3) \$1,147.50 in attorneys' fees.

Lopez and Avilez are informed that they owe this amount to Defendants based on the Court's finding that they were in contempt of court by failing to obey court orders to appear at depositions and at the show-cause hearing. A copy of this order shall be mailed to Lopez and Avilez by the Clerk of Court at the following address:

555 Demya, San Antonio, TX 78245.

It is so ORDERED.

SIGNED this 24th day of July, 2013.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE